

REMARKS

Applicants thank Examiner Sullivan for the review of the pending application. Claims 1 and 2 are currently amended. Support for the amendments is found in, at least, paragraphs 16 and 17 of the published application (page 7 of the specification). No other claims are pending in the application, and no new matter is added.

PRIORITY

The PCT application PCT/JP2003/008362 is the U.S. original application. There is no stated claim for priority under 35 U.S.C. § 119(a)-(d). Thus, there is no document of which to provide a certified copy.

OATH/DECLARATION

The PCT application PCT/JP2003/008362 is the U.S. original application. There is no stated claim for priority under 35 U.S.C. § 119(a)-(d). Thus, no replacement oath or declaration is necessary.

35 U.S.C. § 112 Rejections

Claims 1 and 2 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner has argued that the terms “characterized in the presence of” and “as effective constituent” are unclear. The Examiner also argued that the term “alkyl glucoside-derivatives” is indefinite, and that clarity is required regarding the concentration of the alkyl glucosides. Applicants traverse the rejection. To expedite prosecution, Applicants have amended the claims to delete the phrases “characterized in the presence of” and “as effective constituent.” Applicants have also amended the claims to eliminate the term “derivatives” and to state the concentration of the alkyl glucosides as a percentage of the pesticide.

The rejections under 35 U.S.C. § 112 are moot in view of this amendment, and thus Applicants respectfully request withdrawal of the rejections.

35 U.S.C. § 102(b) Rejections

Claim 1 was rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Burzio (U.S. 5,496,494). Applicants respectfully traverse this rejection.

For a reference to anticipate a claim under 35 U.S.C. § 102(b), it must teach each and every element that is recited in the claim, as it is arranged in the claim and in as complete detail as is contained in the claim. MPEP 2131.

Amended claim 1 recites “a pesticide for controlling insects and plant pathogens.” In contrast, Burzio does not teach a pesticide at all, nor does Burzio teach any compound for controlling insects and plant pathogens as is claimed in amended claim 1. Rather, Burzio teaches a “process for decreasing the build-up of inorganic incrustations on fabrics deriving from water hardness and due to repeated washing cycles with detergent compositions.” [Burzio col. 1 lines 5-10]. Thus, Burzio does not teach every element that is recited in claim 1. Accordingly, Burzio does not anticipate claim 1, and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

35 U.S.C. § 103(a) Rejections

Claims 1 and 2 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Cutler et al. (U.S. 6,117,820) in view of Levin et al. (U.S. 5,166,193). Claim 2 was additionally rejected under 35 U.S.C. 103(a) as being patentable over Burzio. Applicants respectfully traverse these rejections.

Regarding the first obviousness rejection, the Examiner argues that Cutler teaches all of the recited elements except “hydrogenated starch hydrolysate.” The Examiner acknowledges that Cutler instead teaches glyphosate. The Examiner argues that it would have been obvious for one of skill in the art to combine Cutler and Levin, and to exchange the glyphosate of Cutler with the hydrogenated starch hydrolysate of Levin to arrive at the claims of the pending application.

Such a combination, however, would not be obvious to one of skill in the art. That is because Cutler discloses an agrochemical formulation (specifically, a herbicide¹) comprising an electrolyte and an alkyl glucoside. One would not substitute the glyphosate of Cutler (which is an electrolyte) with the hydrogenated starch hydrolysate of Levin (which is not an electrolyte). According to the teachings of Cutler, the Examiner's proposed substitution would not be expected to work. With respect to claim 2, the concentrations are not made obvious to try. Levin, which has no examples including hydrogenated starch hydrolysate, does include examples incorporating saccharides in the Levin pesticide. But the saccharides of the Levin examples are used at 50% concentrations of the overall pesticide -- not the low concentrations of alkyl glucosides claimed (0.005 to 20%). Thus, claim 1 and claim 2 are not obvious for at least these reasons.

Regarding first and the second obviousness rejections, claims 1 and 2 are not obvious for at least the reason that the Applicants have achieved unexpected superior results in that pesticide achieves a higher level of efficacy than expected for killing insects and plant pathogens for such a low concentration of alkyl glucosides in the pesticide (0.005 to 20%). See, for example, the data provided in Table 1 that shows that when samples 13 to 17 have a dilution ratio of 200 parts, they achieve an unexpected superior compensated mortality of no less than 79.8% for *Myzus persicae*. Comparative examples with a dilution ratio of 200 parts achieved a compensated mortality of no higher than 50%. See also Table 3 for similar unexpected and superior results. With a dilution ratio of 200 parts, samples 13-17 achieved a compensated mortality of no less than 83.5 % for *Tetranychus urticae*. Comparative examples at dilution ratio of 200 parts achieved a compensated mortality of no higher than 50%.

For at least these reasons, claims 1 and 2 are not obvious over the combination of Cutler and Levin, and claim 2 is not obvious over Burzio. Accordingly, Applicants respectfully request withdrawal of these objections.

¹ Cutler teaches herbicides for killing weeds; it does not teach about managing toxic hazards with respect to crops or gardening. This is in contrast to the pesticides of the pending claims, which have the unexpected and superior advantage of not having detectable adverse effects on the species tested, as shown in Table 6 of the specification.

CONCLUSION

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. OTA-0007 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to such deposit account number.

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Respectfully submitted,

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